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U.S. Patent Application No. 09/699,922
Attorney Docket No. 00-4026

REMARKS

In the Office Action, the Examiner rejected claims 1, 3, 4, 7, 8, and 24 under 35 U.S.C. § 102(b) as anticipated by PLUNKETT (U.S. Patent No. 5,386,478); rejected claim 5 under 35 U.S.C. § 103(a) as unpatentable over PLUNKETT in view of KONSTANTINOU et al. (U.S. Patent No. 6,584,201); rejected claim 6 under 35 U.S.C. § 103(a) as unpatentable over PLUNKETT in view of HADLEY et al. (U.S. Patent No. 6,061,455); rejected claims 9, 11, 12, and 14 under 35 U.S.C. § 103(a) as unpatentable over PLUNKETT in view of SANSUR (U.S. Patent No. 6,169,807); rejected claim 13 under 35 U.S.C. § 103(a) as unpatentable over PLUNKETT in view of SANSUR, and further in view of KONSTANTINOU et al.; rejected claims 15, 16, 21, and 23 under 35 U.S.C. § 103(a) as unpatentable over PLUNKETT; rejected claim 22 under 35 U.S.C. § 103(a) as unpatentable over PLUNKETT in view of KONSTANTINOU et al.; objected to claims 2 and 10 as containing allowable subject matter; and allowed claims 17-20. Applicant respectfully traverses the rejections under 35 U.S.C. §§ 102 and 103. Claims 1-24 remain pending.

At the outset, Applicant notes with appreciation the indication that claims 2 and 10 would be allowable if rewritten in independent form and the indication that claims 17-20 are allowable over the art of record.

Claims 1, 3, 4, 7, 8, and 24 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by PLUNKETT. Applicant respectfully traverses.

A proper rejection under 35 U.S.C. § 102 requires that a reference teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly

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taught must be inherently present. See M.P.E.P. § 2131. PLUNKETT does not disclose or suggest the combination of features recited in Applicant's claims 1, 3, 4, 7, 8, and 24.

Independent claim 1 recites receiving a first audio signal from an audio device, receiving a data packet from the audio device, where the data packet comprises a second audio signal, determining whether a difference between the first audio signal and the second audio signal exceeds a threshold value, and adjusting the audio level of the audio device when the difference between the first audio signal and the second audio signal exceeds the threshold value. PLUNKETT does not disclose or suggest the features of claim 1.

For example, PLUNKETT does not disclose receiving a data packet from the audio device, where the data packet comprises a second audio signal. The Examiner relied on signal 12R (Fig. 1) of PLUNKETT for allegedly corresponding to this feature (Office Action, pg. 2). Applicant submits that this signal of PLUNKETT in no way relates to the recited feature.

PLUNKETT discloses a system for automatically adjusting a sound quality of a stereophonic system 18 (Fig. 1; col. 1, lines 6-10). PLUNKETT places a microphone 36 in a remote control 34 to detect a test signal delivered from the loudspeakers of stereophonic system 18 (12 L and 12 R, Fig. 1; col. 3, lines 21-35). If an unbalance is detected, remote control 34 can be used to make the necessary balance adjustment (col. 3, lines 36-52).

Element 12R in Fig. 1 of PLUNKETT corresponds to the audio signal that is delivered from the right loudspeaker of stereophonic system 18. Contrary to the

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Examiner's position, PLUNKETT in no way discloses or suggests that audio signal 12R is a data packet from an audio device, where the data packet comprises a second audio signal, as required by claim 1. In fact, PLUNKETT in no way discloses or suggests a data packet, let alone the transmission of a data packet to remote control 34.

Since PLUNKETT does not disclose the features of claim 1, the rejection of claim 1 under 35 U.S.C. § 102(b) as anticipated by PLUNKETT is improper.

For at least the foregoing reasons, Applicant submits that claim 1 is not anticipated by PLUNKETT.

Claims 3, 4, and 7 depend from claim 1. Therefore, these claims are not anticipated by PLUNKETT for at least the reasons given above with respect to claim 1.

Independent claims 8 and 24 recite a feature similar to that recited in claim 1. Therefore, claims 8 and 24 are not anticipated by PLUNKETT for reasons similar to those given above with respect to claim 1.

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PLUNKETT in view of KONSTANTINOU et al. Applicant respectfully traverses.

Claim 5 depends from claim 1. Applicant submits that the disclosure of KONSTANTINOU et al. does not cure the deficiencies in the disclosure of PLUNKETT set forth above with respect to claim 1. Therefore, Applicant submits that claim 5 is patentable over PLUNKETT and KONSTANTINOU et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1.

Moreover, this claim recites additional features not disclosed or suggested by the combination of PLUNKETT and KONSTANTINOU et al.

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Claim 5 recites that the data packet further includes a reactivity setting value and that the adjusting occurs when a time period since a previous audio level adjustment equals or exceeds the reactivity setting value. PLUNKETT and KONSTANTINOU et al. do not disclose or suggest this combination of features.

For example, PLUNKETT and KONSTANTINOU et al. do not disclose or suggest a data packet that is received from an audio device including a reactivity setting value. The Examiner admitted that PLUNKETT does not disclose this feature (Office Action, pg. 5). The Examiner relied on KONSTANTINOU et al. for allegedly disclosing "a remote automatic volume control apparatus which polls for changes in sound every second to prevent continual fluctuations in emitted sound level (i.e. adjusts after one second (reactivity time) has passed since last adjustment)" (Office Action, pg. 5). This allegation by the Examiner in no way addresses the above-identified feature of claim 5. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 5.

KONSTANTINOU et al. discloses a remote control device 10 that includes a directional antenna 22 that receives audio signals from a sound-emitting device 36 and an omni-directional antenna 26 that receives sound from all directions around remote control device 10 (Fig. 1; col. 3, lines 25-40). KONSTANTINOU et al. does not disclose remote control device 10 receiving a data packet from sound-emitting device 36 or any other device, as required by claim 1, from which claim 5 depends. Therefore, KONSTANTINOU et al. cannot disclose the data packet including a reactivity setting value, as required by claim 5.

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For at least these additional reasons, Applicant submits that claim 5 is patentable over PLUNKETT and KONSTANTINOU et al., whether taken alone or any reasonable combination.

Claim 6 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PLUNKETT in view of HADLEY et al. Applicant respectfully traverses.

Claim 6 depends from claim 1. Applicant submits that the disclosure of HADLEY et al. does not cure the deficiencies in the disclosure of PLUNKETT set forth above with respect to claim 1. Therefore, Applicant submits that claim 6 is patentable over PLUNKETT and HADLEY et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1.

Claims 9, 11, 12, and 14 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PLUNKETT in view of SANSUR. Applicant respectfully traverses.

Claim 9 recites a sensor and an audio device. The sensor is configured to receive a first audio signal, receive at least one data packet comprising a second audio signal, determine whether a difference between an average volume level of the first audio signal and the second audio signal exceeds a threshold value, generate a response data packet when the difference between the average volume level of the first audio signal and the second audio signal exceeds the threshold value, the response data packet including a volume adjustment command, and transmit the response data packet. The audio device is configured to transmit the first audio signal, transmit the at least one data packet to the sensor, receive the response data packet, and adjust an audio level based on the response

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data packet. PLUNKETT and SANSUR do not disclose or suggest this combination of features.

For example, PLUNKETT and SANSUR do not disclose a sensor that is configured to receive at least one data packet comprising a second audio signal. The Examiner relied on signal 12R in Fig. 1 of PLUNKETT as allegedly corresponding to this feature (Office Action, pg. 6). Applicant submits that this element of PLUNKETT in no way corresponds to the recited sensor.

As set forth above, PLUNKETT discloses a system for automatically adjusting a sound quality of a stereophonic system 18 (Fig. 1; col. 1, lines 6-10). PLUNKETT places a microphone 36 in a remote control 34 to detect a test signal delivered from the loudspeakers of stereophonic system 18 (12 L and 12 R, Fig. 1; col. 3, lines 21-35). If an unbalance is detected, remote control 34 can be used to make the necessary balance adjustment (col. 3, lines 36-52).

Element 12R in Fig. 1 of PLUNKETT corresponds to the audio signal that is delivered from the right loudspeaker of stereophonic system 18. Contrary to the Examiner's position, PLUNKETT in no way discloses or suggests that audio signal 12R is a data packet comprising a second audio signal, as required by claim 9. In fact, PLUNKETT in no way discloses or suggests a data packet, let alone the transmission of a data packet to remote control 34. The disclosure of SANSUR does not remedy this deficiency in the disclosure of PLUNKETT.

For at least the foregoing reasons, Applicant submits that claim 9 is patentable over PLUNKETT and SANSUR, whether taken alone or in any reasonable combination.

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Claims 11, 12, and 14 depend from claim 9. Therefore, these claims are patentable over PLUNKETT and SANSUR, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 9.

Claim 13 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PLUNKETT in view of SANSUR, and further in view of KONSTANTINO et al. Applicant respectfully traverses.

Claim 13 depends from claim 9. Applicant submits that the disclosure of KONSTANTINO et al. does not cure the deficiencies in the disclosures of PLUNKETT and SANSUR set forth above with respect to claim 9. Therefore, Applicant submits that claim 13 is patentable over PLUNKETT, SANSUR, and KONSTANTINO et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 9.

Claims 15, 16, 21, and 23 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PLUNKETT. Applicant respectfully traverses.

Independent claim 15 recites features similar to those given above with respect to claim 1. For example, claim 15 recites receiving a data packet comprising at least one second audio signal. For the reasons given above with respect to claim 1, Applicant submits that PLUNKETT does not disclose or suggest this feature of claim 15.

For at least the foregoing reasons, Applicant submits that claim 15 is patentable over PLUNKETT.

Independent claim 16 recites, *inter alia*, generating a data packet that comprises at least one second audio signal. The Examiner appears to allege that PLUNKETT

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discloses this feature, but fails to point to any section of PLUNKETT for support (Office Action, pg. 8). As set forth in detail above with respect to claim 1, PLUNKETT in no way discloses or suggests generating a data packet that comprises at least one second audio signal, as required by claim 16. Accordingly, claim 16 is patentable over PLUNKETT.

Claim 21 recites a computer-readable medium having a packet data structure comprising a volume setting field that stores a value representing a volume setting of an audio device and an audio sample field that stores at least one audio sample. The Examiner appears to allege that PLUNKETT discloses these features, but fails to point to any section of PLUNKETT for support (Office Action, pg. 9). As set forth in detail above with respect to claim 1, PLUNKETT in no way discloses or suggests a data packet. Therefore, PLUNKETT does not disclose or suggest a data packet that comprises a volume setting field that stores a value representing a volume setting of an audio device and an audio sample field that stores at least one audio sample, as required by claim 21.

For at least the foregoing reasons, Applicant submits that claim 21 is patentable over PLUNKETT.

Claim 23 recites a computer-readable medium having a packet data structure comprising a destination address field that stores a destination address and a volume adjustment field that stores a value indicating that a volume of an audio device is to be adjusted. The Examiner appears to allege that PLUNKETT discloses these features, but fails to point to any section of PLUNKETT for support (Office Action, pg. 9). As set forth in detail above with respect to claim 1, PLUNKETT in no way discloses or suggests

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a data packet. Therefore, PLUNKETT does not disclose or suggest a data packet that comprises a destination address field that stores a destination address and a volume adjustment field that stores a value indicating that a volume of an audio device is to be adjusted, as required by claim 23.

For at least the foregoing reasons, Applicant submits that claim 23 is patentable over PLUNKETT.

Claim 22 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PLUNKETT in view of KONSTANTINOU et al. Applicant respectfully traverses.

Claim 22 depends from claim 21. Applicant submits that the disclosure of KONSTANTINOU et al. does not cure the deficiencies in the disclosure of PLUNKETT set forth above with respect to claim 21. Therefore, Applicant submits that claim 22 is patentable over PLUNKETT and KONSTANTINOU et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 21.

In view of the foregoing remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

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